IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 560 OF 1999

Sou.Pramodini Parshuram Lingayat. ... Appellant.
Versus.
Parshuram Lingayat. ... Respondent.

Shri S.S.Redekar for the Appellant.

Shri Kansara for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 10th February, 2005.

P.C.:

1. By order dated 28th January 2004 this Court expressed desire that the dispute between the parties should be settled amicably. Therefore, on 27th January 2005 when the matter was called out before me I grated two weeks time to the Advocates appearing for the parties to ascertain whether any settlement is possible. The Counsel appearing for the parties stated that the settlement was not possible. Therefore, I have heard the learned Counsel for the parties on merits of the matter.

2. The marriage between the Appellant/wife and the Respondent/husband was solemnised on 22nd April 1985. In a petition filed by the Appellant-wife, decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955 was passed on 31st March 1991

and thereafter the present petition was filed in the year 1993 for invoking the ground under clause (ii) of the sub-section (1A) of section 13 of the said Act of 1955. Thus it is apparent that from the year 1991 the parties are residing separately and there is no reconciliation.

3. The petition filed by the Respondent-husband under section 13(1-A)(ii) of the said Act of 1955 was dismissed by the trial Court. In an appeal preferred by the Respondent-husband decree for divorce has been passed.

4. Shri Redekar, the learned Counsel appearing for the Appellant relied upon section 23 of the said Act of 1955 and submitted that as the Respondent-husband was trying to take advantage of his own wrong by not cohabiting with the Appellant inspite of the decree for restitution of conjugal rights, he was not entitled to decree of divorce. He invited my attention to certain statements made by the Respondent-husband in his cross-examination. He relied upon the judgment of the Division Bench of this Court reported in 2002 Mah.L.J. page 41 (Ravindra Shelar v/s.Kalpana Ravindra Shelar) and submitted that when the evidence on record shows that the husband was taking advantage of his own wrong, decree ought not to have been passed. The leaned Counsel submitted that the marriage cannot be dissolved lightly by the Courts on

the ground of breakdown of marriage. Shri Kansara, the learned Counsel appearing for the Respondent supported the impugned Judgment and Decree.

5. The Appellate Court has considered the evidence of the husband. The Respondent-husband has stated in his evidence that the Appellant was not ready and willing to reside with him even after the decree of restitution of conjugal rights was passed. When a suggestion was given to the Respondent that whether he was willing to reside with the wife separately in a separate premises at village Margatamhane the husband expressed his inability to do so. The learned Counsel for the Appellant has placed reliance on this statement made by the Respondent-husband This is not a case where the husband has admitted that he is not ready and willing to cohabit with the wife. The denial of the husband is in context of a condition sought to be imposed by the wife for staying together with the husband. The wife wants to stay in a separate premises and that also in a particular village. The Appellate Court after referring to the oral evidence of both the parties has come to the conclusion that the Appellant-wife was not at all ready and willing to cohabit with the husband. The Respondent has also referred to the wild allegations made by the Appellant-wife regarding his alleged illicit relations with a lady.

6. In the Judgment of the Division Bench in the case of Ravindra Shelar (supra) a finding has been recorded that there was a positive wrong on the part of the husband and therefore, there was no compliance with the decree of restitution of conjugal rights. In the case before the Division Bench, the husband stated categorically before the Family Court that inspite of decree of restitution of conjugal rights, he has no desire to resume cohabitation with the wife. In the facts before the Division Bench,a finding was recorded that the husband has committed a wrong and therefore, by virtue of section 23 of the said Act of 1955 he cannot be permitted to take advantage of her own wrong.

7. In the facts of the present case, there is a decree of restitution of conjugal rights and inspite of the decree within the stipulated statutory period the Appellant did not resume cohabitation . In the circumstances, the Appellate Court passed a decree for divorce. The Decree is not passed on the ground of irretrievable breakdown of marriage. I find no infirmity in the same.

8. At this stage, the Advocate appearing for the Appellant stated that an order was passed against the Respondent under section 125 of the Code of Criminal Procedure 1973 and the Respondent is in arrears to the tune of about Rs.55,000/-. Shri Kansara, the learned

Advocate for the Respondent submitted that under the orders of the Court the Respondent has been permitted to pay the arrears by instalments. In case the Respondent has defaulted in making payment of maintenance, the Appellant is at liberty to take out appropriate proceedings.

9. In the result the Appeal fails and the same is dismissed with no order as to costs.

Judge.